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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 0 9 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician specializing in hematology and oncology, specialties relating respectively to blood disorders and to cancer. At the time he filed the petition, the petitioner was a hematology/oncology fellow at [redacted]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 18, 2009. In an effort to establish the national impact of the petitioner's work, counsel stated that the petitioner's "original research has already had a direct impact on the field and has gained him nationwide recognition." Counsel stated that the record contained "Letters of Support from Independent Experts Nationwide. Please note that these letters come from experts in the field from around the country both from institutions at which [the petitioner] has worked and institutions at which he has not worked." Three of the six witnesses work in New

York, New York, the same city where the petitioner works. Also, three of the witnesses trained in Beirut, Lebanon, where the beneficiary earned his medical degree.

We note that counsel, in her cover letter, italicized the names of professional societies and associations, which is not a standard stylistic convention. Four of the six witness letters likewise contain italicized names of these societies and associations. (One of the two remaining letters does not contain any references to such organizations.)

[redacted] stated:

> As a hematology/oncology fellow at Staten Island University Hospital, [the petitioner] is one of the brightest and best fellows it has been my privilege to mentor. . . . A revealing new study just released in the Journal of Oncology Practice predicts that there will be an "*acute shortage*" of over 4,000 Oncologists by the year 2020. . . . These figures are worrisome and highlight the increasing need for physician-scientists such as [the petitioner] to continue his extraordinary work in this field.

(Emphasis in original.) A worker shortage is generally a poor argument for the national interest waiver, because the labor certification process exists to address worker shortages. *See Matter of New York State Dept. of Transportation* at 218. In the case of physicians, section 203(b)(2)(B)(ii) of the Act provides for shortage-based waivers for physicians who meet certain conditions. The procedure to apply for the waiver in this way is set forth in the USCIS regulations at 8 C.F.R. § 204.12. The petitioner, however, has made no attempt to follow that procedure. The petitioner has simply asserted that there is (or eventually will be) a shortage of physicians in his specialty.

[redacted] asserted that the petitioner "has tremendous experience in leading and critical roles," but provided no further details to support this claim.

[redacted] and several other witnesses provide details of various cases the petitioner has handled as a clinical physician, stating that this information "illustrates [the petitioner's] clinical prowess." USCIS does not dispute that the petitioner is engaged in the practice of medicine, including the diagnosis and treatment of patients. Individual, anecdotal reports, however, have limited value in this proceeding. There is no evidence to show that these reports are typical of patient outcome, or that the beneficiary's clinical interventions have attracted national attention or otherwise been national in scope. Because exceptional ability is not, by itself, grounds for the waiver, the petitioner cannot qualify for the waiver simply by showing that he is a good doctor.

[redacted] an associate attending physician in neurology and epilepsy at SIUH, is one of three witnesses who claims no training, experience, or expertise in hematology or oncology. [redacted] stated that the petitioner "has attained an extraordinary high degree of expertise unmatched by even the most senior physicians in the fields of Hematology and Oncology" and is "one of the leading physician-scientists in the nation." [redacted] also claimed that the petitioner has mastered a broader range of medical procedures than most physicians in his specialty.

Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation* at 221 (footnote omitted).

The third New York-based witness is [redacted] assistant professor at Weill Cornell Medical College and a graduate of the American University of Beirut. [redacted] specialties are internal medicine and cardiology; [redacted] claims no training, experience, or expertise in hematology or oncology. [redacted] stated:

> I do not base my letter on personal knowledge of [the petitioner]; I base it on a review of his credentials and through his stellar reputation in the field. My experience leads me to the conclusion that [the petitioner] is one of the top physician-scientists in the United States whose immigrant petition is in the national interest.
>
> [The petitioner] is regarded as one of the leading physician-scientists in the United States and one of the world's pioneering researchers in hematology and oncology. . . . [The petitioner] is among the elite few physician-scientists developing new diagnostic methodologies as well as treatments for blood disorders and cancer. [The petitioner] has been distinguished from his peers through the award of numerous leadership roles at prestigious institutions internationally. [The petitioner] **holds a leadership role as a Hematology and Oncology Fellow at leading medical institutions such as** [redacted] – **North Shore Long Island Jewish System**. . . .
>
> [The petitioner] has distinguished himself through membership in some of the most competitive medical organizations in the world. [The petitioner] is a member of the [redacted], and [redacted], to name a few. Memberships in these prestigious organizations are only awarded to those physician-scientists who have attained an extraordinary level of expertise unmatched by the vast majority of their colleagues. Membership in these societies requires satisfaction of stringent requirements, applications are closely scrutinized and reviewed by Executive Committees for superior skill and accomplishment. The fact that [the petitioner] boasts membership in so many of these highly esteemed organizations is evidence of his superior reputation as a physician-scientist.

(Emphasis in original.) The record does not support the claim that the petitioner's fellowship at [redacted] is a "leading position." Rather, the position amounts to advanced training under a "mentor." With respect to the beneficiary's memberships in professional organizations, the record does not contain any documentation from the organizations themselves to corroborate [redacted] claims.

[redacted] in Ohio, studied at the American University of Beirut at the same time as [redacted] stated:

> [The petitioner,] in my estimation, is one of a small group of the most talented hematology and oncology specialists in the nation. . . . I base my evaluation of [the petitioner] on his professional accomplishments that are well known in the field and a review of his CV, publications, and presentations. As my evaluation of [the petitioner] is not through personal knowledge, I can objectively state that [the petitioner] is one of a select group of oncologists and hematologists whose continued work in the field is critical in serving the national interest.
>
> . . . In accordance with his numerous leadership roles, [the petitioner] is renowned for his clinical expertise in oncology and hematology. He has mastered highly specialized procedures used in cancer therapy and ancillary illnesses for which only a few physicians have a collective knowledge. . . .
>
> [The petitioner] is also regarded as one of the foremost physician-scientists in the nation today. [The petitioner] has produced research that is both innovative and groundbreaking; his research has changed the lives of thousands of people across the country. . . . [The petitioner's] innovative research not only has significant impact on the academic and research fields, but it is changing the way clinicians treat their patients throughout the country.

As with many witnesses, [redacted] asserted that the beneficiary's research work has been widely influential, but did not provide concrete information about the nature of that influence. [redacted], like several others, simply asserted that the beneficiary was one of the top figures in his field as though this were a self-evident fact rather than a claim to be proved.

[redacted] an assistant professor at the University of Texas [redacted] Houston. [redacted] medical studies in Beirut overlapped the petitioner's studies in that city. Dr. [redacted] stated:

> [The petitioner,] in my estimation, is one of a small group of the most talented hematologist-oncologists in the nation. . . . I base my evaluation of [the petitioner] on his professional accomplishments, which are well known in the field, and a review of his CV, publications, and presentations. As my evaluation of [the petitioner] is not through personal knowledge, I can objectively state that [the petitioner] is one of a select group of hematologist-oncologists whose continued work in the field is critical to serving the national interest. Moreover, he has been **awarded travel grants** to present his work at prestigious national conferences, even winning a **Certificate of Merit** from the [redacted] for his work with epidural blood patch placement and

> spinal anesthesia. These accomplishments, as well as those discussed herein, serve as objective marks of excellence recognized around the world.
>
> As one of the few top experts in the field of medical oncology and hematology, [the petitioner] has been offered numerous leading positions at prestigious research and medical institutions throughout the country. In fact, he was one of only 2 out of 200 applicants selected to serve in a highly-coveted Hematology/Oncology Specialist [position] at [redacted] – North Shore Long Island Jewish System. It should be noted that there are only 385 Hematology/Oncology Fellowship positions in the entire nation, and as such, [the petitioner's] selection for such a position at one of the nation's leading medical facilities is a genuine mark of distinction. . . .
>
> In addition to his clinical expertise, [the petitioner] is also recognized as a leading physician-scientist. . . . Notably, experts are already closely monitoring the progress that [the petitioner] is making in this field as a result of the prolific research findings he has achieved in the past.

(Emphasis in original.) [redacted]hen discussed a case in which the petitioner diagnosed cryoglobulinemia in a 55-year-old hepatitis C patient. [redacted]ike several other witnesses, stated that his "evaluation of [the petitioner] is not through personal knowledge," but this is not the same as saying that he has no personal knowledge of the petitioner.

We note that [redacted] letter repeats, almost word-for-word, the entire first paragraph of Dr. [redacted]letter. This virtually identical language is beyond coincidence, and leads us to conclude that the same person wrote at least parts of both letters. (We will not limit the possibility of common authorship to these two letters.)

The only witness with no documented ties to New York or Beirut i[redacted] of the University of Pennsylvania. [redacted] did not disclaim prior knowledge of the petitioner; he did not specify how he knows of the petitioner and his work. Like [redacted]laims no training, experience, or expertise in hematology or oncology; he is a professor of radiology and neurosurgery and his university's division chief of Neuroradiology. As with several other witnesses, [redacted] referred to the petitioner's [redacted] fellowship as "a leading position" indicative of his "extraordinary ability as a physician-scientist." [redacted]discussed the case of the 55-year-old cryoglobulinemia patient that also appeared i[redacted] cited "a shortage . . . of . . . specialists in Hematology and Oncology," and asserted that the petitioner is "one of the leading physician-scientists in the nation." Most of the assertions in [redacted] letter can be found (worded differently) in other witness letters.

Under the heading "Significant Contributions," the petitioner submitted copies of several "Invasive Procedure Tracking" forms. These appear to be standard forms, used to maintain records of procedures performed on patients. The petitioner did not explain how these forms document "significant contributions" rather than routine treatment.

As evidence of his research work, the petitioner submitted copies of two published articles and two manuscripts. The two manuscripts do not report the results of research projects. Rather, they are case studies relating the treatment of individual patients. One of these case studies concerned the 55-year-old cryoglobulinemia patient, which two supposedly independent witnesses already knew about even though the case study had not yet been published.

A divider page in the record refers to "Evidence that the alien's work has been cited," but this page is followed immediately by another divider page for a different subject. The petitioner does not appear to have submitted any evidence of citation of his published work.

Other submitted evidence included materials regarding conference presentations, memberships in professional associations, and background information regarding the petitioner's specialty. The petitioner's claims regarding the importance of this evidence, however grandiose, cannot compensate for the lack of independent evidence to support those claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The director denied the petition on December 1, 2009, stating that the petitioner had established the intrinsic merit and national scope of medical research, but had not shown that he, individually, qualifies for the waiver. The director acknowledged the petitioner's witness letters, but found that they did not establish the wider impact of the petitioner's work. The director also found that the petitioner had not submitted any evidence of citation of his published work, and that a subsequent search of the Google Scholar database ([redacted]) showed only one citation.

On appeal, counsel states: "Please find the attached materials, which document [the petitioner's] satisfaction of the required credentials for classification of extraordinary ability [*sic*] in the national interest." The petitioner submits no new "materials" on appeal except for counsel's brief, which cannot "document" any of the petitioner's claims, because the brief simply repeats those claims. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the petitioner stands out from his peers because he knows an especially broad range of medical procedures, and "[o]nly extraordinary physicians such as [the petitioner] have the exceptional ability to perform such sensitive and life-altering procedures." Even if the record showed this assertion to be true, which it does not, counsel does not explain how the range of the petitioner's skills is national in scope. The impact of the petitioner's knowledge of medical procedures is limited to those patients whom the petitioner actually treats.

Counsel protests that "no credence was given to the significant impact of [the witnesses'] testimonial letters from renowned experts in the field." The opinions of experts in the field are not without weight

and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In this instance, half of the witnesses do not claim to be "experts in the [petitioner's] field." Rather, they are medical specialists in fields such as neurology or cardiology, rather than the beneficiary's field of hematology/oncology. The remaining letters are questionable, for a variety of reasons. The use of nearly-identical language in the letters of [redacted] demonstrates that those letters were not written independently. Not all the letters match so precisely, but they are broadly similar, each containing sweeping claims that the beneficiary has scaled the pinnacle of his profession before even completing his professional training at [redacted]. The witnesses have asserted that the beneficiary is "one of the leading physician-scientists in the United States and one of the world's pioneering researchers in hematology and oncology" (or words to that effect), but the record is devoid of documentary evidence to establish the petitioner's reputation or the influence of his research. Letters newly written especially for the petition, solicited from witnesses selected by the petitioner, do not constitute objective, documentary evidence. Therefore, the letters the petitioner has submitted carry far less weight than counsel implies, even if their origins were not in doubt.

Regarding the observation that the director could find only one citation of the petitioner's published work, counsel claims: "Having been cited by others in medicine, even once, is consistent with establishing the petitioner as contributing a great national benefit." Counsel goes on to discuss "the process time from submission of a medical work to publication," and the preparation of a new case study for publication. Counsel offers no argument to support the argument that a single citation demonstrates "a great national benefit"; counsel simply makes this statement as though it were a self-evident truth, requiring no proof or elaboration.

The remainder of counsel's appellate brief simply recapitulates the materials previously submitted. Counsel, for example, repeats the still-unsupported claim that the petitioner belongs to medical societies that demand "satisfaction of stringent requirements" as a condition of membership. Counsel states: "The fact that [the petitioner] boasts membership in so many of these highly esteemed organizations is evidence of his superior reputation as a physician-scientist." The petitioner's memberships prove no such thing; they prove only that he is a member of those particular organizations. Surely information about the membership requirements ought to be available from the organizations themselves, but the petitioner has made no visible effort to submit that information, and thereby prove that counsel's claims regarding membership standards are based in fact rather than self-serving claims.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.